

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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UNITED STATES,

-against-

DONOVAN SHOUDER
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**MEMORANDUM OF
DECISION AND ORDER**
07-CR-287 (ADS)

-----X
DONOVAN SHOUDER,

-against-

10-CV-1388 (ADS)

UNITED STATES.
-----X

APPEARANCES:

**Loretta A. Lynch, United States Attorney
for the Eastern District of New York**

Attorneys for the United States
610 Federal Plaza
Central Islip, NY 11722

By: John J. Durham, Assistant United States Attorney

Gary Schoer, Esq.

Attorney for Donovan Shouder
6800 Jericho Turnpike
Syosset, NY 11791

SPATT, District Judge.

Presently before the Court are two motions filed by the defendant Donovan Shouder in the above-captioned cases.

On January 7, 2011, Shouder filed a motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). To date, the Government has not opposed or otherwise responded to this motion. As a result, the Court hereby sets this matter down for re-sentencing on December 2, 2011 at 11:30am. The United States Department of Probation is requested to obtain all records regarding the Defendant's

behavior during his current term of incarceration and produce all such records to this Court on or before November 16, 2011.

Prior to filing the motion for a sentence reduction, on March 25, 2010, Shouder filed a habeas petition pursuant to 28 U.S.C. § 2255 seeking to vacate, set aside, or correct his sentence on the grounds that: (1) counsel was ineffective in failing to advise the Court of its ability to depart from the crack/powder ratio in sentencing based on policy disagreements with the ratio and (2) Shouder did not knowingly and voluntarily waive his right to appeal because he was not informed about possible sentencing reductions for crack offenses. In light of the fact that the Court is granting Shouder's motion for a re-sentencing based on the sentencing criteria for crack offenses, the Court denies Shouder's habeas petition as moot. The Clerk of the Court is directed to close the civil case.

SO ORDERED.

Dated: Central Islip, New York
October 3, 2011

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge